

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ASHANTE HARRIS	:	CASE NO.:
921 Rogers Place, # 3	:	
Cincinnati, Ohio 45206	:	(Judge _____)
Plaintiff,	:	
v.	:	
COMMUNICARE HEALTH SERVICES,	:	
INC. MEDICAL PLAN	:	
SERVE:	:	COMPLAINT
ACFB Incorporated	:	
200 Public Square, Suite 2300	:	
Cleveland, OH 44114	:	
and	:	
UMR, INC.	:	
<u>SERVE:</u>	:	
CT Corporation System	:	
4400 Easton Commons Way	:	
Suite 125	:	
Columbus, OH 43219	:	
Defendants.	:	

Plaintiff, Ashante Harris ("Plaintiff"), by and through counsel, for her Complaint against Defendants, United Healthcare Services, Inc. and UMR, Inc. ("Defendants"), states as follows:

I. PARTIES

1. Plaintiff Ashante Harris resides at 921 Rogers Place – Unit 3, Cincinnati, Ohio 45206.

2. Defendant, Communicare Health Services, Inc. Medical Plan (“Plan”), is a self-funded healthcare plan within the meaning of the Employees Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq. as amended (“ERISA”). Communicare Health Service, Inc. (“Communicare”) provides health benefits for its employees, spouses and families through the Plan. Defendants are in possession of the Plan documents.

3. Defendant, UMR, Inc. (“UMR”), is a corporation located at 115 W. Wausau Avenue, Wausau, Wisconsin 54401.

4. Defendant, UMR is the Claims Administrator of the Communicare Health Services, Inc. Medical Plan.

5. Defendant, UMR administrates the Plan and Communicare’s Administrative Committee is designated as Plan Administrator of the Plan and is acting under 29 U.S.C. §1002(16).

II. JURISDICTION

6. Plaintiff incorporates by reference, each and every allegation set forth in paragraphs 1 through 5, as if fully restated herein, and further states as follows:

7. This Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. §1132(e)(1) and 28 U.S.C. §2201.

8. Venue is appropriate pursuant to 28 U.S.C. §1391(b)(2) because the acts complained of herein occurred in this judicial district.

III. FACTS

9. Plaintiff incorporates by reference, each and every allegation set forth in paragraphs 1 through 8, as if fully restated herein, and further states as follows:

10. Plaintiff, Ashante Harris is, at all times relevant herein, employed by Communicare.

11. Plaintiff is a plan participant in the Plan within the meaning of ERISA 29 U.S.C. §1102(7).

12. Plaintiff submitted a timely claim for benefits in accordance with medical care and treatment at The Christ Hospital, Cincinnati, Hamilton County, Ohio at the direction of her attending physician(s) on or about August 30, 2018.

13. Defendants, by and through their agents, servants and/or employees, denied Plaintiff's request for benefits and coverage due and owing in accordance with the terms and conditions of the Plan.

14. Plaintiff's first notification of the denial of benefits and coverage came to light in early to mid-2020 when the Christ Hospital network filed a small claims complaint, Case No. 20CV01007 against her.

15. Plaintiff, individually, and through counsel, timely informed defendants of her desire for benefits and coverage and to appeal any denial of her claim for benefits.

16. Plaintiff, individually, and through counsel, via telephone communications, attempted to get information and a copy of the Plan covering Plaintiff at the time of treatment.

17. In addition, Plaintiff, individually, and through counsel, provided Defendants' written requests for, among other things, copies of the summary plan description, the administrative services contract between Communicare and UMR, amendments to the Plan documents for Communicare, Medical Plan, copies of the

Summary of material modifications to the Plan, and copies of Form 5500, including all schedules, filed with the Department of Labor for the relevant time period.

18. Plaintiff's requests, individually, by and through counsel, for Plan documents, went unanswered and remain unanswered.

IV. COUNT I

ACTION PURSUANT TO 29 U.S.C. §1132(A)(1)(B) FOR DECLARATION THAT PLAINTIFF IS ENTITLED TO RECEIVE MEDICAL BENEFITS UNDER THE PLAN

19. Plaintiff incorporates by reference, each and every allegation set forth in paragraphs 1 through 18, as if fully restated herein, and further states as follows:

20. Under the terms of the Plan, Plaintiff is entitled to medical benefits based on the terms of the coverage for her referenced care and treatment.

21. Defendants' denial of her coverage for her referenced care and treatment violates the terms of the Plan and violates 29 U.S.C. § 1132(A)(1)(b).

V. COUNT II

ACTION AGAINST PLAN ADMINISTRATOR PURSUANT TO 29 U.S.C. § 1132(C)(1)(B)

22. Plaintiff incorporates by reference, each and every allegation set forth in Paragraphs 1 through 21 as if fully restated herein, and further states as follows:

23. Plaintiff submitted a timely claim for coverage of care and treatment.

24. Following Defendants' denial of her claim, Plaintiff's timely appeals were submitted, except as excused by Defendants' failure to respond to Plaintiff's reasonable requests for documents and information.

25. Defendants violated 29 U.S.C. §1133 when they failed to provide Plaintiff coverage for her referenced care and treatment and issued a final decision under the Plan denying benefits.

26. In addition, Defendants breached their fiduciary duty to Plaintiff by failing to provide a full and fair review of the denial of coverage, a violation of 29 U.S.C. §1133.

WHEREFORE, Plaintiff respectfully demands relief against Defendants, Communicare Health Services, Inc. Medical Plan and UMR, Inc. as follows:

1. An Order declaring that Plaintiff is entitled to medical benefits pursuant to the Medical Plan.

2. An Order that Defendants are to pay Plaintiff her reasonable attorneys' fees and costs, pursuant to 29 U.S.C. §1132(g)(1).

3. An Order that Defendants are to pay Plaintiff statutory penalties pursuant to 29 U.S.C. §1133 based on Defendants' failure to follow the claims regulations of 29 U.S.C. §1133.

4. Such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Gary F. Franke

Gary F. Franke (0029793)

William M. Brisol (0074005)

Gary F. Franke Co., L.P.A.

Attorneys for Plaintiff

120 East Fourth Street - Suite 1040

Cincinnati, Ohio 45202

Tel: (513) 564-9222

Fax: (513) 564-9990